IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1034 OF 2005

Harichand Kishanlal Zazote Appellant

versus

The Municipal Corpn. of Greater Mumbai. Respondent

Mr.M.Jamdar for appellant.

Mr.A.J.Bhor for BMC respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 9th November 2005

PC :

1. Admit. With the consent of parties returnable forthwith.

2. Heard Mr.Jamdar appearing for the appellant and Mr.Bhor for Municipal Corporation of Greater Bombay (MCGB).

3. The Appeal from Order is directed against an ad-interim order passed by the Trial Court. The Trial Court refused ad-interim orders when Notice of Motion No.4024 of 2005 in L.C. Suit No.4446 of 2005 was moved by the appellant/original

plaintiff.

4. The appellant - original plaintiff fears demolition of his suit structure which according to him has been in existence for the past more than 40 years. Mr.Jamdar submits that the action of demolition is initiated at the instance of the landlord against whom a substantive declaratory suit is pending in the Small Causes Court. At the ad-interim stage itself the learned Judge has held that no case is made out and had, therefore, refused any ad-interim relief.

5. In my view, interest of justice would be served if an opportunity is given to the appellant to produce such materials as are available to substantiate the pleas raised in the suit. At this stage if no protection is granted, the entire suit is likely to become infructuous. It is not a case where the structure is offending in any manner or detrimental to the public interest. Therefore, keeping all contentions of both sides open, the MCGB is restrained from demolishing the suit structure until hearing and final disposal of the Notice of Motion No.4024 of 2005 in L.C.Suit No.4446 of 2005. The Trial Court has already expedited the hearing of the

said Notice of Motion and it is to be taken up on 24th November 2005.

6. Trial Court is requested to dispose of the Notice of Motion within a period of four weeks from the date of receipt of copy of this order. This order is without prejudice to the rights and contentions of both sides.

7. No order is necessary on Civil Application No.1238 of 2005, as Appeal from Order is disposed of. The Civil Application accordingly stands disposed of.

(S.C.DHARMADHIKARI, J.)